DEMOCRACY AND REPRESENTATION

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By WILLIAM SEAL CARPENTER

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Three lucid essays which discuss the principle of representation as it has been applied in the United States and which account for the changes which the American theory of representation has undergone since the establishment of the Constitution.

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In this process, the basis of representation was not found in social or economic groups, although property qualifications for suffrage were not forbidden. The wisdom of fixing the basis of representation on the number of inhabitants has been justified by subsequent developments; for it is clear that the adoption of equal representation of States in the Senate has led to serious evils. So great have these evils become that an amendment of the Constitution is desirable to effect a remedy. Although the States have declined in importance, sectional differences have arisen. It is therefore desirable to have a second chamber elected on a basis of population but apportioned among distinct sectional groupings. This would at the same time enable the various economic interests to display their strength in the elections. A reform of this sort, together with the disfranchisement of the vicious and the illiterate, appear to be steps by which democracy may be advanced. External devices, however, can promote democracy only with a people who are able and willing to do all that is required for its furtherance.

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CHAPTER I

The Foundations of Democracy

THE democratic dogma finds its foundation in the principle that governments derive their just powers from the consent of the governed. Asserted in the Declaration of Independence, the dictum merely restates conclusions long accepted in the political theory of England and America. If the nature of sovereign power was nowhere subjected to careful scrutiny in the formative period of American political institutions it was because of the widespread belief that "the people were in fact the fountain of all power, and by resorting to them all difficulties were got over." [1]

It was a very practical conception of popular sovereignty that pervaded American political thought. As a result of more than a century of town-meetings with their instructions to representatives in the colonial assemblies, the idea had emerged that the people as a whole have in their hands a power which can be counted upon to se-

[1] M. Farrand, *Records of the Federal Convention*, II, p. 476

cure obedience. The Continental Congress recognized the existence of this power when its members refused to enter upon the important question of independence until they had obtained proper instructions from the popular assemblies which had elected them.[2] Even in the Convention of 1787 the Delaware delegates at first objected to considering the proposals for a new constitution because their credentials did not allow them to go so far.[3] It was this same belief in the supreme authority of the people which led James Madison to argue for the ratification of the Constitution through popular conventions.

In order to discover the origins of this power the American colonists in 1776, like their English forebears in the previous century, turned back to the state of nature. "It appears to me," wrote a correspondent to Samuel Adams, "if there is any force in the late Acts of Parliament, they have set us afloat; that is, have thrown us into a state of nature. We now have a fair opportunity of choosing what form of government we think proper, and contract with any nation we please

[2] A. W. Small, *Beginnings of American Nationality* (J.H.U. Studies, 8th ser.), p. 74
[3] Farrand, I, p. 37

for a king to reign over us."[4] The formation of new constitutions was regarded by many of the patriots as the work of a people convened in the state of nature who had "deputed a few fathers of the land to draw for them a glorious covenant."[5] If it could be argued that the condition of the people of Massachusetts, or any other of the thirteen colonies, contrasted strangely with eighteenth century conceptions of the state of nature, the ready answer was that the device served to reveal the people as the source of supreme power.

The theory of popular sovereignty embraced clearly enough the idea that the people have the right to alter their government. In the state of nature this essential attribute of sovereign power was discernible in the hands of the people to a greater degree than in civil society. According to John Locke, who identified this power with the right of revolution, it was not to be exercised for light and transient causes, a view which seems to have commended itself to the framers of the Declaration of Independence. But since the power

[4] H. A. Cushing, *History of the Transition from Provincial to Commonwealth Government in Massachusetts*, p. 8 footnote

[5] H. Niles, *Principles and Acts of the Revolution*, p. 71. See also *ibid.*, p. 66

was thought to exist as a natural right, it was incapable of qualification or limitation. Hence the sovereignty of the people came to be identified with civil liberty, as "a power existing in the people at large, at any time, for any cause, or for no cause, but their own sovereign pleasure, to alter or annihilate both the mode and essence of any former government, and adopt a new one in its stead."[6]

When the convention to frame a constitution for the United States assembled at Philadelphia in May 1787, the question of the ultimate seat of authority did not require discussion. Every delegate realized that each separate constitutional construction would have to find ratification at the hands of the people. But there remained the issue between free will and determinism. That is to say, were the institutions to be set up in the Constitution to rest upon the choice of the convention or had they already been determined by the nature and life of the American people? In the solution of this question the members of the convention displayed great breadth of knowledge and much acuteness in evaluating human motives.

Among the leading men of the convention none

[6]Niles, *Principles and Acts of the Revolution*, p. 47

stood out more conspicuously than James Madison. He was essentially a scholar in politics, blending together vast knowledge and profound insight into human nature. A graduate of Princeton in the Class of 1771, Madison returned for further study. His undergraduate training in the classics was followed by the reading of Hobbes, Locke, Sidney, Pufendorf and other writers on political science in the library of President Witherspoon.[7] The writings of Montesquieu, which formed the basis of Witherspoon's classroom lectures, Madison studied minutely. He possessed the complete equipment which marked the man of education in the American colonies, and his ability to quote from Livy or Plutarch's *Lives* and to explain the political contrivances of the ancient world assured him respectful attention in any assembly.

To the inventive genius of Madison, government was a problem to be worked out by the superior minds in the convention without considering the opinions of the "unreflecting multitude."[8] The method of his political reasoning was

[7] The Library of Princeton University possesses the classroom lectures of President Witherspoon as well as the books contained in his private library. For an account of Witherspoon's ideas on education, see V. L. Collins, *President Witherspoon*, Vol. II, pp. 201–16, *passim*

[8] Farrand, I, p. 215

very largely from historical analogy. He assumed, as Montesquieu had done, the accuracy and sufficiency of the accounts left by the Roman historians, and never hesitated upon the questions of the nature of republics and the principles underlying confederacies to cite examples from the ancient world. In one of the first sessions, "Mr. Madison in a very able and ingenious speech ran through the whole scheme of the government,—pointed out all the beauties and defects of ancient republics; compared their situation with ours wherever it appeared to bear any analogy, and proved that the only way to make a government answer all the end of its institution was to collect the wisdom of its several parts in aid of each other whenever it was necessary."[9] When William Paterson introduced what became known as the "small State plan" for the modification of the Articles of Confederation, Madison led the opposition and "reviewed the Amphyctionic and Achaean confederacies among the ancients, and the Helvetic, Germanic and Belgic among the moderns, tracing their analogy to the United States—in the constitution and extent of their federal authorities—in the tendency of the par-

[9]Farrand, I, p. 110

ticular members to usurp on these authorities, and to bring confusion and ruin on the whole."[10]

Notwithstanding the flavor of finality which attaches to Madison's scholarly demonstrations, his methods of reasoning failed to convince some of his colleagues. In an age which could not boast of critical classical scholarship, his facts were manifestly insufficient. Moreover, it was felt that the differences in his comparisons were more striking than the agreements. Charles Pinckney retorted that "the people of this country are not only very different from the inhabitants of any state which we are acquainted with in the modern world . . . but their situation is distinct from either the people of Greece or Rome, or of any state we are acquainted with among the ancients. Can the orders introduced by the institution of Solon, can they be found in the United States? Can the military habits and manners of Sparta be resembled to our habits and manners? Can the Helvetic or Belgian confederacies, or can the unwieldy, unmeaning body called the Germanic Empire, can they be said to possess either the same or a situation like ours?" He denied that any two people were so exactly alike as to admit

[10] *ibid.*, p. 317

of the same political institutions. "A system," he said, "must be suited to the habits and genius of the people it is to govern, and must grow out of them."[11]

Many years later John Stuart Mill in the opening sentences of his famous essay on representative government summed up the two conflicting theories respecting political institutions which are revealed in the debate between Madison and Pinckney. But the Federal Convention anticipated Mill in holding that each of these doctrines is untenable if pushed to an exclusive and logical conclusion. The framers of the Constitution discovered that although the construction of a government may be the result of the conscious purposes of men, the institutions set up must be congenial to the spirit of the people for whom they are intended.

Everyone is familiar with the statement of Gladstone that "the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." Yet the extent to which political institutions are a matter of rational choice received less enlightenment

[11] Farrand, I, pp. 401–2. For a similar criticism by James Wilson, see J. Elliot, *Debates*, II, pp. 422–3

from the Convention of 1787 than has generally been supposed. The primary purpose was to establish a national government which should provide security for private rights and the steady dispensation of justice. "Interferences with these," said Madison, "were evils which had more perhaps than anything else produced this convention." But the framers of the Constitution could not break with the political theory of the time. They were fully conscious of the fact that the genius of the American people was in favor of democracy.[12] Indeed, the limits of political speculation were fixed by the democratic dogma of the Declaration of Independence. There could be no dissent from the mandate that governments derive their just powers from the consent of the governed. Confronted with the necessity of reconciling the principles of democracy and the security of private rights, the convention was reduced to the dilemma noted by Alexander Hamilton in which "the members most tenacious of republicanism . . . were as loud as any in declaiming against the vices of democracy."

Hamilton, as he argued for the adoption of the Constitution, raised the question "whether soci-

[12] Farrand, I, p. 101

eties of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and chance." His answer was that a government would succeed in proportion to the interest enlisted in its support.[13] "Men will pursue their interests," he told the New York Convention in 1788. "It is as easy to change human nature as to oppose the strong current of selfish passions. A wise legislator will gently divert the channel, and direct it, if possible, to the public good."[14] According to this principle, the part to be played by reason is to point out interest.

What Hamilton assumed was that men recognize their interests and consciously shape their political conduct to promote them. A man may have a very clear conception of his own interest. But it is a difficult thought process to discover the precise measures which will promote that interest. A merchant conceives it to be his interest to sell goods. But he can recognize only dimly, and often not at all, the kind of legislation which will assure him the best market. Hamilton appreciated the

[13] *Federalist*, No. 11
[14] Elliot, *Debates*, II, p. 320

bewilderment of the average citizen when called upon to make a decision which he hopes may be consistent with his interest. He believed that this decision could be rightly made only by the legislator. It was therefore necessary that government possess sufficient stability and permanency to control the political vagaries of the people.

In the Federal Convention, Hamilton "acknowledged himself not to think favorably of republican government," but "he was sensible at the same time that it would be unwise to propose one of any other form. In his private opinion, he had no scruple in declaring . . . that the British Government was the best in the world, and that he doubted much whether any thing short of it would do in America."[15] These remarks led to the charge that Hamilton favored a monarchical form of government. In point of fact, he desired a very simple political structure and aimed his criticism at the "multiple agency system" involved in the contemporary conception of a republic.

Hamilton appreciated that the British monarchical form could not be transferred intact to American soil. He believed at this time a maxim

[15] Farrand, I, p. 288

he later expressed by saying that "what may be good at Philadelphia, may be bad at Paris, and ridiculous at Petersburg," a formula which, of course, could be reversed and made to include London.[16] His real desire seems to have been to combine popular participation in government with the separation of powers and the stability of the British system. Writing to Gouverneur Morris ten years before the Federal Convention, Hamilton had said: "That instability is inherent in the nature of popular government I think very disputable; unstable democracy is an epithet frequently in the mouths of politicians; but I believe that from a strict examination of the matter, from the records of history, it will be found that the fluctuations of governments in which the popular principle has borne a considerable sway, have proceeded from its being compounded with other principles;—and from its being made to operate in an improper channel. Compound governments, though they may be harmonious in the beginning, will introduce distinct interests, and these interests will clash, throw the State into convulsions, and produce change or dissolution. When the deliberative or judicial powers are vested wholly or

[16] L. B. Dunbar, *Monarchical Tendencies in the United States*, p. 88

partly in the collective body of the people, you must expect error, confusion, and instability. But a representative democracy, where the right of election is well secured and regulated, and the exercise of the legislative, executive, and judiciary authorities is vested in select persons, will, in my opinion, be most likely to be happy, regular, and durable."[17] The idea of responsible government through the cooperation of the legislative and executive departments is here discerned long before the rise of the cabinet system was reflected in political philosophy.

The ideas of Hamilton did not prove acceptable to the Federal Convention partly because of the aristocratic flavor of some of his proposals but especially on account of the extreme nationalism of his plan. His proposal to reduce the States to "corporations for local purposes" alienated the entire group of believers in States' rights.[18] Hamilton never appreciated the popular attachment to the State governments. His realism would not permit him to see that men often cling through senti-

[17] *Works*, IX, pp. 71–2

[18] Farrand, I, p. 287. Hamilton explained in the Federal Convention the precise position he thought the States ought to occupy in the new scheme of government, but his remarks were not calculated to soothe the advocates of States' rights. See Farrand, I, pp. 323, 358

ment to institutions which may be shown through logical arguments to be imperfect. Toward the close of his life, Hamilton remarked that "nothing is more fallacious than to expect to produce any valuable or permanent results in political projects by relying merely on the reason of men. Men are rather reasoning than reasonable animals, for the most part governed by the impulse of passion."[19] If he had adapted his proposals in the Convention of 1787 to the spirit of the American people, his arguments would doubtless have carried much weight. But, as Dr. Johnson said, "the gentleman from New York . . . has been praised by everybody, he has been supported by none."

The most sublimated conception of democracy is to be found in the utterances of James Wilson of Pennsylvania. Born and educated in Scotland, Wilson came to America when twenty-three years old. He served several times in Congress and was one of the signers of the Declaration of Independence. At forty-five he was regarded as one of the ablest lawyers in the country. Intellectually the equal of Madison, he was not afflicted with the shyness which marked the Virginian in the company of others. But he was at a disadvan-

[19] *Works*, X, p. 432

tage in lacking the intimate acquaintance with his colleagues which Madison possessed.

From the outset Wilson was at once democratic and national. "He could not agree that property was the sole or the primary object of government and society. The cultivation of the mind was the most noble object. . . . Conceiving that all men wherever placed have equal rights and are equally entitled to confidence," he insisted that "the majority of people wherever found ought in all questions to govern the minority."[20] None, with the exception of Gouverneur Morris, was so often on his feet during the debates. Each time he spoke directly to the purpose, seeking to emphasize and enlarge upon the idea that any government, if it is to enjoy the public confidence, must reflect the mind or sense of the people at large.

Wilson "wished for vigor in the government, but he wished that vigorous authority to flow from the legitimate source of all authority."[21] For

[20] Farrand, I, p. 605. For an interesting study of the political theory of James Wilson, see A. C. McLaughlin, "James Wilson in the Philadelphia Convention," *Political Science Quarterly*, XII, pp. 1 *ff*. The most complete statement of Wilson's philosophy is contained in his lectures before the law students of the University of Pennsylvania in 1790. *Works* (ed. Andrews), 2 vols. Chicago, 1896.

[21] *ibid.*, p. 132

this reason, he sought "to derive not only both branches of the legislature from the people, without the intervention of the State legislatures, but the executive also."[22] He admitted the difficulty of defining with precision the sentiments of the people throughout the thirteen States. But "he could not persuade himself that the State governments and sovereignties were so much the idols of the people, nor a national government so obnoxious to them as some suppose." Both were meant for the people, and "the same train of ideas which belonged to the relation of the citizens to their State governments were applicable to their relations to the general government, and in forming the latter, we ought to proceed by abstracting as much as possible from the idea of State governments. With respect to the province and objects of the general government, they should be considered as having no existence."[23]

Filled with the democracy of the next century, Wilson regarded the officers of government as the servants of the people. Representation was "made necessary only because it is impossible for the people to act collectively." From this theory it

[22] Farrand, I, p. 69
[23] *ibid.*, p. 253

necessarily followed that in the selection of political institutions the convention should aim at a single object, "the accommodation of the voters."

The democratic doctrine was favored by the economic circumstances in the United States. Among the people there were few distinctions of rank and less of fortune. Land was the chief form of property and its wide distribution brought about in fact a considerable economic equality to correspond to the theory of political equality. It was argued by Charles Pinckney that "the people of the United States are more equal in their circumstances than the people of any other country —that they have very few rich men among them . . . ; that it is not probable that this number will be greatly increased; that the genius of the people, their mediocrity of situation and the prospects which are afforded their industry in a country which must be a new one for centuries are unfavorable to the rapid distinction of ranks." Pinckney looked to the abundant free lands in the public domain west of the Alleghenies to maintain the economic and social equality of the American people. "That vast extent of unpeopled territory," he said, "which opens to the frugal and industri-

ous a sure road to competency and independence will effectually prevent for a considerable time the increase of the poor or discontented, and be the means of preserving that equality of condition which so eminently distinguishes us."[24]

But the democratic ideal, as Wilson moulded it, could not be reconciled with the necessary protection of private rights. Madison was quick to see that the central problem of democracy is not the maintenance of equality but the preservation of liberty. Within the limited areas of the several States disturbances had already arisen which made him shrink from the logical consequences of unfettered democracy. Despite the apparent freedom of economic opportunity, Madison saw in the popular demands for paper money legislation and stay laws evidences of a diversity of interests among the people of the United States. In reply to Pinckney, he said: "We cannot be regarded even at this time as one homogeneous mass in which every thing that affects a part will

[24]Farrand, I, p. 400. The remarks in the convention of Charles Pinckney, Mason, and Madison on the one side and Gouverneur Morris, Elbridge Gerry and others on the other side of the question of the political significance of the frontier anticipate the conclusions reached by nearly all of the group of American historians who have in recent years dealt so copiously with the subject. By 1787 the frontier as a political issue was fully defined.

affect in the same manner the whole. In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who labor under all the hardships of life and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this country, but symptoms of a levelling spirit, as we have understood, have sufficiently appeared in certain quarters to give notice of the future danger."[25] Equality which did not exist by nature could not be established through universal suffrage and majority rule. To the Virginian it was fallacious to suppose "that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions."[26] As long as there was a diversity in the

[25] *ibid.*, pp. 421–2

[26] *Federalist*, No. 10. Madison had long reflected upon the theory advanced in this number of the *Federalist*. As early as April 1787, he had outlined his ideas. *Writings* (ed. Hunt), II, pp. 361 *ff.* This sketch formed the

faculties of men, there could be no uniformity of interests. Inequality Madison regarded as the natural condition of men, which the statesman must take into account in the formation of popular government.

Madison believed that democracy could be reconciled with the security of private rights if the spirit of faction could be curbed. By faction he did not mean a party in the modern sense of the word, but "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."[27] Such "blocs" would always be dangerous because always actuated by selfish motives.

But the causes of faction he traced to "the nature of man," where latent dispositions are "brought into different degrees of activity, according to the different circumstances of civil society." He observed that "all civilized societies would be divided into different sects, factions,

basis of his speech of June 6 in the Federal Convention. Farrand, I, p. 135

[27] *Federalist*, No. 10

and interests, as they happened to consist of rich and poor, debtors and creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader, the disciples of this religious sect or that religious sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger."[28]

Although the causes of faction could not be removed, the control of its effects was within human power. "The only remedy," said Madison, "is to enlarge the sphere, and thereby divide the community into so great a number of interests and parties, that in the first place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the second place, that in case they should have such an interest, they may not be apt to unite in the pursuit of it."[29] That is to say, the vital political forces in the state should be tied up in a nice poise through the clauses of a written constitution. A government so contrived would, as Madison believed, "secure the perma-

[28] Farrand, I, p. 135
[29] *ibid.*, p. 136

nent interests of the country against innovation."

The ideal which Madison envisaged was one of dynamic equilibrium. He thought that by deriving the various branches of the government from different sources all positive action to the detriment of established order and guaranteed rights would be checked from the outset. Every safeguard against "the mutability of public councils" was to be embodied in the interior structure of the government itself. The keystone of the whole edifice was to be the system provided for judicial control, through which the Constitution would be preserved inviolate against legislative or executive aggression.

Apart from the idea of judicial control, which is the unique contribution of America to the science of government,[30] the theory is that set forth by Montesquieu. Madison had studied carefully the pages of the observant Frenchman. The equilibrium of power which the latter had thought necessary to balance the enormous preponderance of royalty in England Madison conceived to be equally essential in the United States as a restraint upon temporary majorities in pursuit of their selfish interests. What he failed to

[30] W. S. Carpenter, *Judicial Tenure in the United States*, Chap. I

take into account was the difference in the way in which power had come into the hands of the people in the two countries. The evolution of the British constitution had witnessed the admission to civil and political rights of successive classes or estates. The rights which each order came to enjoy were first wrung as privileges from the Crown. At no time was the grant of privileges conditioned upon a theory of abstract human equality. On this side of the Atlantic, however, the establishment of independent governments was accompanied by a declaration that all men are created equal. It is true that property qualifications and religious tests barred the way to an immediate realization of political equality. But the free-and-equal doctrine had been proclaimed as the ideal, and no theory which gave to property and to estates a place in the process of government could withstand its triumphal advance. The analogy which Madison sought to trace through the writings of Montesquieu between the conditions of political life in England and those in America proved as defective as his earlier essays in the comparative governments of ancient and modern times. Nevertheless, the idea prevailed that the interior structure of the government should be so

contrived "that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."[31]

The maintenance of the nice poise and balance of political forces involved in the theory of Madison would seem to demand that government remain within the control of the classes most directly affected. This thought was undoubtedly in the mind of Gouverneur Morris when he proposed restricting the right of suffrage to the freeholders. Morris appears to have been convinced of the utter depravity of man. "Give votes to people who have no property," he said, "and they will sell them to the rich who will be able to buy them. He looked to the time when the country will abound with mechanics and manufacturers who will receive their bread from their employers. Will such men be the secure and faithful guardians of liberty?"[32] But he was reminded by George Mason that in some States the franchise had already been extended beyond the freeholders. Only five States restricted the right to vote to owners of real estate. In seven States alternatives to landed property were permitted, while in

[31] *Federalist*, No. 51
[32] Farrand, II, p. 202

Pennsylvania the only requirement was the payment of public taxes.[33]

Moreover, there was a strong sentiment in the convention that a property qualification ought to embrace other forms of property besides real estate. Rufus King objected to the exclusion of the "monied interest," and Madison agreed that property in land was not a sure criterion of wealth.[34] The idea was freely expressed that "every man having evidence of attachment to and permanent common interest with the society ought to share in all its rights and privileges."[35] None could pretend that these virtues were confined to the freeholders.

But the real obstacle to the inclusion in the Constitution of a property qualification for the exercise of the suffrage was the accomplished fact that in some States the franchise was enjoyed by persons who were not owners of property. Nathaniel Gorham declared that "the elections in Philadelphia, New York and Boston, where the merchants and mechanics vote are at least as good as those

[33] K. Porter, *Suffrage in the United States*, pp. 12–13. George Mason declared in the convention that eight or nine States had already extended the right of suffrage beyond the freeholders. Farrand, II, p. 201

[34] Farrand, II, pp. 123–4

[35] *ibid.*, p. 203. For a similar statement by Alexander Hamilton, see *Works*, I, p. 90

made by freeholders only."[36] Madison was of the opinion that the freeholders "would be the safest depositaries of republican liberty. But he was uncertain how a constitutional provision limiting the suffrage to freeholders would be received in States where the right was now exercised by every description of people."[37] Pierce Butler "feared any provision which would effect any disfranchisement,"[38] and James Wilson was "against abridging the rights of election in any shape."[39] The discussion concluded with the solemn warning of Gorham that "the people of America who have been accustomed to vote without freeholds will not give it up."[40]

In the decision to omit from the Constitution any qualification for the suffrage the "rooted prejudices" of the people controlled the judgment of the delegates. But the powerful leaven of the democratic philosophy was destined to penetrate even further into the political system under construction. The adoption of the rule of numbers in fixing the apportionment of representation and

[36] Farrand, II, p. 216
[37] *ibid.*, p. 204
[38] *ibid.*, p. 202
[39] *ibid.*, I, p. 375
[40] *ibid.*, p. 216

the admission of new States on equal terms with the old foreshadowed the democracy of the nineteenth century.

The controversy in the Convention of 1787 over the apportionment of representation is intimately connected with the long series of contests between the democratic forces of the frontier and the aristocratic pretensions of the tidewater settlements. As early as 1676 the social revolt in Virginia known as Bacon's Rebellion indicated the character of the coming struggle. "In general this took these forms: contests between the property-holding class of the coast and the debtor class of the interior, where specie was lacking, and where paper money and a readjustment of the basis of taxation were demanded; contests over defective or unjust local government in the administration of taxes, fees, lands, and the courts; contests over apportionment in the legislature, whereby the coast was able to dominate, even when its white population was in the minority; contests to secure the complete separation of Church and State; and, later, contests over slavery, internal improvements, and party politics in general."[41] This antagonism between the coast and the interior

[41] F. J. Turner, *The Frontier in American History*, pp. 110–1

was exhibited along the entire frontier. In New England it gave rise to Shays' Rebellion and to separatist movements in Maine, New Hampshire and Vermont. The frontiersmen in Pennsylvania in 1764 demanded a right to share in political privileges with the older part of the colony, and protested against the apportionment by which the counties of Chester, Bucks, and Philadelphia, together with the city of Philadelphia, elected twenty-six delegates, while the five frontier counties had but ten. The three old wealthy counties under Quaker rule feared the growth of the West, therefore made few new counties, and carefully restricted the representation in each to preserve the majority in the old section. The States south of the Potomac showed the same lodgment of power in the hands of the coast, even after population preponderated in the upland country. From New England to Georgia, the interior region had a common grievance against the coast, that it was generally deprived of its due share of representation.

The policy of exclusive tidewater statesmanship was urged in the Philadelphia Convention by Gouverneur Morris. "He thought property ought to be taken into the estimate (of appor-

tionment) as well as the number of inhabitants. Life and liberty were generally said to be of more value than property. An accurate view of the matter would nevertheless prove that property was the main object of society. . . . If property was then the main object of government, certainly it ought to be one measure of the influence due to those who were to be affected by the government. He looked forward to that range of new States which would soon be formed in the West. He thought the rule of representation ought to be so fixed as to secure to the Atlantic States a prevalence in the national councils. The new States will know less of the public interest than these, will have an interest in many respects different, in particular will be less scrupulous of involving the community in wars the burdens and operations of which would fall chiefly on the maritime States. Provision ought therefore to be made to prevent the maritime States from being hereafter outvoted by them. He thought this might easily be done by irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new State will have."[42] Again he ar-

[42] Farrand, I, pp. 533–4

gued that the Western States would be unable to furnish "men equally enlightened" to participate in the work of government. "The busy haunts of men," he said, "not the remote wilderness, was the proper school of political talents. If the western people get the power into their hands they will ruin the Atlantic interests. The back members are always most averse to the best measures."[43]

The spokesman of the propertied and commercial classes, Morris had many followers in the convention. John Rutledge and Pierce Butler of South Carolina saw the advantage to the slave-owning planters of apportioning representatives on a basis of wealth as well as the number of inhabitants.[44] Elbridge Gerry, who feared the influx of Scotch-Irish, French Huguenots and Germans along the frontier, pleaded that those who remained on the Atlantic seaboard might not "be at the mercy of the emigrants."[45] Before any arguments could be advanced on the democratic side, Morris had obtained the adoption of a report which allowed Congress "to regulate the number of Representatives" in any new States

[43]Farrand, I, p. 583
[44]*ibid.*, pp. 534, 541
[45]*ibid.*, II, p. 3

which might be created, "upon the principles of their wealth and number of inhabitants." Since the Atlantic States would have control of the government from the outset, they could "take care of their own interest by dealing out the right of representation in safe proportions to the Western States."[46]

It was only a temporary victory. Two days later the liberal view was introduced in the convention by Colonel Mason. "From the nature of man," he said, "we may be sure that those who have power in their hands will not give it up while they can retain it. . . . Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to States not yet in existence? If the Western States are to be admitted into a Union as they arise, they must, he would repeat, be treated as equals, and subjected to no degrading discriminations."[47] Mason was supported by Edmund Randolph, who observed that "Congress have pledged the public faith to the new States, that they shall be admitted on equal terms. They never would nor ought to accede on

[46] *ibid.*, I., pp. 559–60
[47] *ibid.*, p. 578

any other."[48] Not only the abstract principle of right but a contractual obligation of the Congress under the Articles of Confederation also confronted the exclusive policy of Gouverneur Morris and the party of tidewater control.

Congress had two months earlier been petitioned to provide for the opening of the territory in the valley of the Ohio River. A joint-stock company had been formed by two enterprising citizens of Massachusetts to promote the settlement of the unoccupied lands; eager, impoverished veterans of the Revolutionary War were ready to go and take possession at once. At their request the Ordinance for the Government of the Territory Northwest of the Ohio had been drafted and awaited the final vote. It contained in unmistakable terms the recognition of the equality of the western people with the inhabitants of the old thirteen States. On July 13, a quorum being present in Congress, the bill became a law. At almost the same hour, the Constitutional Convention resolved to apportion representatives solely on a basis of the number of inhabitants. This step having been taken, no further objection was interposed to writing into the Constitution

[48]Farrand, I, p. 580

provisions which opened the way to the admission of new States on terms of equality with those already in existence.[49]

The Constitution was, from the point of view of eighteenth century political theory, a democratic document. It is true, the democratic character of the instrument depends largely upon the failure to lodge political power in the hands of special classes or interests. But it was recognized that with unrestricted suffrage, the apportionment of representation according to the rule of numbers, and the admission of new States on a parity with those already established, the Constitution would not endanger the growth of economic and social equality. Harrington in the seventeenth century had predicated the success of republican institutions upon the widespread ownership of land.[50] In similar vein Madison declared that "the extent and fertility of the western soil would for a long time give to agriculture a preference over manufactures. . . . The value of labor might be considered as the principal criterion of wealth and ability to support taxes; and

[49] Rufus King, in the debates on the admission of Missouri into the Union, argued that the power of Congress to admit new States is conferred without limitation. *Life and Correspondence of Rufus King*, VI, p. 691

[50] *Oceana* (ed. Morley), p. 19

this would find its level in different places where the intercourse should be easy and free, with as much certainty as the value of money or any other thing. Wherever labor would yield most, people would resort, until the competition should destroy the inequality."[51]

For a period extending over ninety-six days the Federal Convention was engaged in its momentous task. Human reason and human prejudices played their part in framing the great document which has since served as the basis of government in the United States. Yet there were added few provisions which could not be found in the State constitutions or in the Articles of Confederation. The framers were dependent largely upon the political experience of their own immediate past; they were not seeking innovations. As John Dickinson said in the course of the debates: "Experience must be our only guide. Reason may mislead us. It was not reason that discovered the singular and admirable mechanism of the English Constitution. It was not reason that discovered or ever could have discovered the odd, and in the eyes of those who are governed by reason, the absurd mode of trial by jury. Accidents probably pro-

[51] Farrand, I, p. 585

duced these discoveries, and experience has given sanction to them. This then is our only guide."[52] Human ingenuity was limited in the main to adapting to the requirements of a new government institutions that were very old. The growth of those institutions may be traced back through the State constitutions, the colonial charters and the charters of the trading companies, to their origins in the great landmarks of English constitutional development. The continuity of this development was not broken in 1787. As Madison said in the *Federalist:* "The truth is, that the great principles of the Constitution proposed by the convention may be considered less as absolutely new, than as the expansion of principles which are found in the Articles of Confederation. . . . If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists less in the addition of *New Powers* to the *Union*, than in the invigoration of its *Original Powers.*"[53]

The crowning feature of the American political system as it was worked out during the summer of 1787, from the point of view of popular govern-

[52] *ibid.*, II, p. 278
[53] *Federalist*, No. 45

ment, is the clear distinction between the sovereignty which vests in the people and the powers which are delegated to the government. When the members of the convention adjourned on the Fourth of July to celebrate the anniversary of the Declaration of Independence, they heard with approval from the lips of Dr. Benjamin Rush the doctrine that "all power is derived from the people; they possess it only on the days of their elections. After this, it is the property of their rulers."[54] The distinction made by Rousseau between state and government is here preserved. But the people cease to be active in political affairs as soon as the government has been set up, except at the periodical elections. By the act of setting up a government the people divest themselves of the rights which they transfer to the government. That is to say, the function of governing becomes lodged exclusively in the government. The true distinction between the democracies of ancient Greece and the American government, declared the writers of the *Federalist*, "lies *in the total exclusion of the people, in their collective capacity*, from any share in the *latter*."[55]

[54] Niles, p. 234
[55] *Federalist*, No. 63

The political philosophy of which this type of state is the central object was expounded by John Locke in the seventeenth century. In Locke's theory, sovereignty can exist nowhere except in the community as a whole. This is the original and supreme will which organizes the government and defines its just powers. It is compatible with almost any variety of institutions, so long as it is recognized that the rulers are the trustees of the people who delegate their powers to them. But the community retains the reserve power of revolution which may be exercised whenever the rulers have so far abused the trust confided in them that it becomes necessary for the people to dispose their powers in another way. In practice the formation or alteration of a constitution has proved to be identical with an act of revolution. Thus through the theory of Locke democracy is revealed rather as a spirit than as a special set of institutions.

The realization of democracy in the United States was an achievement of the nineteenth century. It was fully defined in the words of Lincoln as he gazed upon the resting-places of the heroic dead at Gettysburg,—"government of the people, by the people, and for the people." But this im-

pressive formula does no more than reflect the liberal spirit of the Convention of 1787. With the settlement of the interior valleys of the West and the admission of new States to the Union, aristocratic pretensions came to be disregarded. The sort of equality contemplated by the Declaration of Independence gradually permeated the whole political system.

CHAPTER II

The Idea of Representation

IT is an impressive fact that in the Federal Convention representation was considered solely as a substitute for legislation by direct action of the people. More than a hundred years earlier, Parliament had been described by John Selden as a meeting of representatives of the people made necessary "because the room will not hold all."[1] Through successive generations of American colonists the idea remained unchanged. "What is the principle of representation?" said William Paterson at Philadelphia. "It is an expedient by which an assembly of certain individuals chosen by the people is substituted in place of the inconvenient

[1] *Table Talk*, (ed. Reynolds), p. 46. A theory of Parliament as a representative body was given by Sir Thomas Smith in the reign of Elizabeth. In his book, *De Republica Anglorum* (1583), he said of Parliament: "For every Englishman is intended to be there present, either in person or by procuration and attorneys, of whatever pre-eminence, state, dignity or quality soever he be, from the prince, be he King or Queen, to the lowest person of England. And the consent of Parliament is taken to be every man's consent." Book II, chap. 1. But it would seem that Smith regarded Parliament as a court rather than a legislative assembly. C. H. McIlwain, *High Court of Parliament and Its Supremacy*, pp. 124 *ff*.

meeting of the people themselves."[2] James Wilson "was of the opinion that the national legislative powers ought to flow immediately from the people, so as to contain all their understanding, and be an exact transcript of their minds."[3] This theory emphasizes the notion that representation is designed to secure in the government a reflex of the opinion of the entire electorate rather than to generate an organ of control over the government.

Before we can accept the idea that the legislature can be a "transcript of the whole society," we must admit that the principle of representation is consistent with popular government. Exactly a quarter of a century before the Philadelphia Convention, the French philosopher Rousseau denied that the sovereignty which vests in the people could be represented any more than it could be alienated.[4] In his view, there could be no law which the people in person had not ratified. But Rousseau was himself unable to extend his theory beyond the confines of a city-state, "where everyone hastens to the assemblies." In a modern state of large area such perpetual referenda to the peo-

[2] Farrand, I, p. 561
[3] *ibid.*, p. 141
[4] *Social Contract*, Book III, xv

ple are impracticable. It therefore follows that popular sovereignty implies representation.

It was not until the appearance of the *Encyclopedia* article on "Government" by James Mill in 1820 that the representative system was reflected in political theory. By that date the divergence between English and American political development was well defined. Under the leadership of John Marshall, the Supreme Court of the United States was asserting the scope and limits of the powers vested in the different departments of the government, by the exercise of which they were to check each other. But the doctrine of Mill was that the community itself must check those individuals entrusted with the conduct of government; else they will follow their own interest and produce bad government. Since the community can act only when assembled, and when assembled it is incapable of acting, it must choose representatives. The representative assembly must therefore be the checking body, and must not only have an identity of interest with the community but must also have a degree of power sufficient for the business of checking. The ideas of Mill had little significance in the United States; he was arguing for a theory of representa-

tive institutions with which Americans were not yet acquainted.

The Constitution of the United States was established on a theory of checks and balances which precluded the existence of any single department of government as a checking body. The people through the clauses of the Constitution assigned to each department specific powers and fixed the limits within which they were to be exercised. The powers thus granted, though limited to specific objects, are plenary as to those objects. As one writer has said: "The checks and balances of the Constitution were regarded, not as restraints upon the government itself, but as restraints upon the classes who would have possession of the government, to keep them from abusing their trusts for individual advantage."[5] The desire was not to enable the people to control the government, but to enable the government to control the people. "In framing a government which is to be administered by men over men," said Madison, "the great difficulty lies in this: you must first enable the government to control the governed, and in the next place, oblige it to control itself."[6]

[5] H. J. Ford, *Rise and Growth of American Politics*, p. 60
[6] *Federalist*, No. 51

The constitution-makers with historic precedent immediately behind them provided that all bills for raising revenue should originate in the popular house of the national legislature. This control of the purse was intended as a resource in the hands of the representatives of the people to compel the government to accomplish its just purposes. In the *Federalist* it was claimed that "this power over the purse may, in fact, be regarded as the most complete weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."[7] But in the sentence granting this power, the Constitution states that "the Senate may propose or concur with amendments as on other bills." The result has been that the Senate has steadily gained in its influence over revenue legislation until it now frankly assumes, under its power to make amendments, what is for practical purposes the right of initiating revenue measures. Whatever may be the theory held today regarding the Senate, that body was not originally formed on the principles of popular representation.

[7] No. 58

The system of checks and balances also involved the doctrine of the separation of powers which denied any cooperation of executive and legislature in the construction of legislation. At the moment when political practice in England was disregarding the separation of the legislative and executive departments, the doctrine was upheld by the framers of the United States Constitution in the belief that they were imitating what they regarded as cardinal principles in the English system. The fact that the Prime Minister had become the real executive was perceived clearly enough in the Convention of 1787. But the idea still prevailed on both sides of the Atlantic that it was the business of the King to govern the country. This "interception of royal duty by ministerial combinations, based upon parliamentary interest, was regarded as an aberration from the principles of the English constitution and as the chief source of political corruption."[8] In other words, the rise of the cabinet system was not yet reflected in political philosophy.

It must not be forgotten that John Francis Mercer argued in the convention for the creation of a cabinet. "The legislature," he said, "must

[8] Ford, p. 276

and will be composed of wealth and abilities, and the people will be governed by a junto. The executive ought to have a council, being members of both houses. Without such an influence, the war will be between the aristocracy and the people. He wished it to be between the aristocracy and the executive. Nothing else can protect the people against those speculating legislatures which are now plundering them throughout the United States."[9] This brought from Elbridge Gerry the retort that "according to the idea of Mr. Mercer our government it seems is to be a government of plunder. In that case it certainly would be prudent to have but one rather than many to be employed in it."[10] But the convention had already agreed, before the arrival of Mercer at Philadelphia, that it was essential to the principle of the separation of powers that the whole executive power should be vested in the President. "The President should be authorized to call or not for advice as he might choose," was the thoughtful conclusion of Charles Pinckney. "Give him an able council and it will thwart him; a weak one and he will shelter himself under their sanction."[11]

[9] Farrand, II, p. 284
[10] *ibid.*, p. 285
[11] *ibid.*, p. 329

Indeed, the principle of the separation of legislative and executive functions continued to be regarded as so fundamental throughout the formative period of American political institutions that every deviation, no matter how slight, was discouraged.

At the first session of Congress, in the bill to create a Treasury Department, it was intended that the Secretary should have access to the House of Representatives "to report plans for the improvement and management of the revenue, and the support of the public credit."[12] The measure was drawn not merely upon the lines, but almost in the exact language of the act creating the Superintendent of Finance under the Articles of Confederation. In that position Robert Morris had frequently appeared in the Congress and had enjoyed an intimate acquaintance with its proceedings. But the proposal to give to the Secretary of the Treasury the same direct and familiar access to the Congress under the Constitution was met by the objection that this "would be a dangerous innovation upon the constitutional privilege" of the House of Representatives. The old Congress, it was agreed, could safely allow the

[12] *Annals of the First Congress*, I, pp. 616 *ff.*

Superintendent of Finance to appear before them, "because they possessed the legislative and executive power; they could abolish his plans and his office together, if they thought proper." But under the Constitution the Congress would have no control over the head of an executive department, therefore they "ought to be cautious of putting dangerous powers into his hands." Moreover, "all the information that can be required, may be called for, without adopting any clause that may undermine the authority of this House, and the security of the people. The Constitution has pointed out the proper method of communication between executive and legislative departments; it is the duty of the President to give, from time to time, information to Congress of the state of the Union, and to recommend to their consideration such measures as he shall judge necessary and expedient. If revenue plans are to be prepared and reported to Congress, here is the proper person to do it; he is responsible to the people for what he recommends, and will be more cautious than any other person to whom a less degree of responsibility is attached." The jealousies which were thus aroused produced a determination to exclude the heads of the departments

from the House of Representatives and the opportunity to establish this branch as an organ of control was rejected.

The representative body was not conceived to be an agency for the control of the government; it was to be a part of the government itself. Powers were granted to Congress which were to be exercised subject to no limitations, except those contained in the Constitution. As "a substitute for a meeting of the citizens in person," Congress was expected to perform its functions in the same spirit, if not in the same manner, as an assembly of the people.

This conception of the representative body sprang from the notion of the state as a compact. In his lectures before the law students of the University of Pennsylvania in 1790, James Wilson said: "In free states the people form an artificial person or body politic, the highest and noblest that can be known. They form a moral person . . . as a complete body of free natural persons, united together for their common benefit; as having an understanding and a will; as deliberating and resolving and acting; as possessed of interests which it ought to manage; as enjoying rights

which it ought to maintain; and as lying under obligations which it ought to perform. To this moral person, we assign, by way of eminence, the dignified appellation of *state*. . . . The constitution of the United States and that of Pennsylvania rest solely, and in all their parts, on the great democratical principle of a representation of the people; in other words, of the moral person, known by the name of the state."[13] Thomas Hobbes in the seventeenth century had a similar conception of the unity of the multitude in one person. But Wilson departed from the theory of the Englishman in considering sovereignty as continuing to be vested in the people, who delegate specific powers to the government. "Representation," said Wilson, "is the chain of communication between the people and those to whom they have committed the exercise of the powers of government."[14]

The idea that the representative body will be a miniature of the electorate has the merit of simplicity. But it fails to achieve reality because the representatives are not always able or willing

[13] *Lectures on Law. Works*, II, pp. 120–3. It is probable that some of the lectures were not delivered, but they indicate clearly enough the more mature ideas of Wilson on political philosophy

[14] *ibid.*, p. 124

to reflect the opinions of their constituents. Any system of representative government depends in large measure for its success upon the men entrusted with its conduct. "It is a mistake," said Mercer of Maryland in the Federal Convention, "to suppose that the paper we are to propose will govern the United States. It is the men whom it will bring into the government and interest in maintaining it that is to govern them. The paper will only mark out the mode and the form. Men are the substance and must do the business."[15]

The State governments had already been established upon the idea that the representatives in the legislatures would reflect accurately the sentiments of the electorate. Yet there was almost universal complaint that "the State legislatures drawn immediately from the people did not always possess their confidence." Gouverneur Morris warned the delegates assembled at Philadelphia that "the legislature is worthy of unbounded confidence in some respects, and liable to equal distrust in others. When their interest coincides with that of their constituents, as happens in many of their acts, no abuse of trust is to be apprehended. When a strong personal interest hap-

[15] Farrand, II, p. 289

pens to be opposed to the greatest interest, the legislature cannot be too much distrusted."[16]

The danger to be guarded against was the growth in the representative body of what Bentham once defined as sinister interests. Interests adverse to those of the whole community had already reduced the government in some of the States to a condition of turbulence and anarchy. In the constitutional convention, James Wilson called attention to the fact that in these States "the legislatures are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the general government and perhaps to that of the people themselves."[17] Paper money legislation and stay laws enacted in the State legislatures indicated a solicitude for the debtor classes which was adverse to the general welfare.

Recognition of the danger did not, however, produce a remedy. Here the convention entered upon the realm of the impalpable. "With regard to the sentiments of the people," at the time of the convention, James Wilson "conceived it difficult to know precisely what they are. Those of

[16] *ibid.*, p. 104
[17] *ibid.*, I, p. 358

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the particular circle in which one moved were commonly mistaken for the general voice."[18] Madison "observed that if the opinions of the people were to be our guide, it would be difficult to say what course we ought to take. No member of the convention could say what the opinions of his constituents were at this time; much less could he say what they would think if possessed of the information and lights possessed by the members here; and still less what would be their way of thinking six or twelve months hence."[19] If subsequent experience has proved anything, it is that the doubts which assailed the men of 1787 have become permanently fixed in American political speculation. No one can pretend today that the interests of the representative assembly are always in harmony with those of the electorate or that the power supposedly delegated by the people is not frequently perverted to vicious ends.

The only provision inserted in the Constitution for maintaining a proper responsibility of the representative to his constituents was that of frequent elections. "The House of Representatives," wrote the authors of the *Federalist*, "is so consti-

[18] Farrand, I, p. 253
[19] *ibid.*, p. 215

tuted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there to remain forever unless a faithful discharge of their trust shall have established their title to a renewal of it."[20] This argument seems almost specious in view of the fact that most of the State legislatures, which were so generally condemned in the Federal Convention, were chosen by annual elections. Indeed, Hamilton suggested that "frequency of elections tended to make the people listless to them; and to facilitate little cabals."[21]

Notwithstanding the unqualified approbation in the convention of the idea of representation which aims to secure in the government a reflex of public opinion, the framers of the Constitution were unable to adapt the theory to the exigencies of the situation which confronted them. "The

[20] No. 57
[21] Farrand, I, p. 362

doctrine of representation," said James Wilson early in the debates, "is this—first the representative ought to speak the language of his constituents, and secondly that his language or vote should have the same influence as though the constituents gave it."[22] This interpretation, which is the only one consistent with the idea of representation as a substitute for direct action by the people, demands the apportionment of representatives on a basis of population. But the assent of the delegates from the smaller States could not be obtained to any practical arrangements which did not secure in at least one branch of the legislature the equal representation of the States.

Under the leadership of William Paterson a compromise was forced upon the convention whereby the States secured an equal representation in the Senate while the members of the House of Representatives were to be apportioned according to population. This was in effect a repudiation of Paterson's own principle of representation. "Mr. Madison reminded Mr. Paterson that his doctrine of representation, which was in its principle the genuine one, must forever silence the pretensions of the small States to an equality

[22] Farrand, I, p. 185

of votes with the large ones. They ought to vote in the same proportion in which their citizens would do, if the people of all the States were collectively met."[23] Nevertheless the delegates from the small States were determined to secure protection for their interests regardless of the principles that might have to be sacrificed.

Undoubtedly the Constitution would never have been accepted by the small States without this compromise. But it introduced at once into the government of the United States the great sinister interest of States' rights, which has since remained an obstacle to the development of a national sentiment which could be reflected in Congress. "The State systems," wrote Henry Knox to Rufus King in the summer of 1787, "are the accursed things which will prevent our being a nation. The democracy might be managed, nay, it would be a remedy itself after being sufficiently fermented; but the vile State governments are sources of pollution, which will contaminate the American name for ages—machines that must produce ill, but cannot produce good."[24] Because the States have been so firmly entrenched behind

[23] *ibid.*, p. 562
[24] *Life and Correspondence of Rufus King*, I, p. 228

the Constitution, the American people have never been able again to attain the political solidarity they once displayed so conspicuously in the Declaration of Independence.

The explanation for the constitutional position of the Senate was that it would not only be a check upon the hasty deliberations of the lower house but would also provide representation for the sovereignty of the States. "The sense of the States," it was argued, ought to be collected, not only to allow these entities to maintain their integrity but also to bring them to the support of the national government. John Dickinson "compared the proposed national system to the solar system, in which the States were the planets, and ought to be left to move freely in their orbits."[25] In order to secure the sovereignty of the States, he thought "the State legislatures ought to have some means of defending themselves against the encroachments of the national government."

In the effort to reflect in Congress the opinion of the State governments, as well as that of the people, it became necessary to modify the conception of the relation of the representative to his constituents. In the minds of the men of 1787,

[25] Farrand, I, p. 153

members of Congress were not to be simply the delegates of the people; for the purposes of government they were to be the people themselves. They were to be guided by "the deliberate sense of the community," but this was not to "require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests."[26] This is, in effect, to reject the conception of a restricted mandate which Burke had already condemned and which in a later day was to be excoriated by the younger Mill.

But senators were deemed to be "in quality of ambassadors of the States."[27] It was therefore considered entirely appropriate that they should receive instructions from the State legislatures which elected them. In 1788 the selection of Madison as senator from Virginia was successfully opposed by Patrick Henry on the ground that it was "doubted whether Mr. Madison will obey his instructions,"[28] and thereafter the State

[26] *Federalist*, No. 71. See also the debates in the first session of Congress on the proposal to amend the Constitution to permit the people "to instruct their representatives." *Annals of the First Congress*, I, pp. 761 *ff.*

[27] Elliot, *Debates*, II, pp. 18, 46, 145; IV, pp. 123, 207

[28] M. Conway, *Life and Letters of Edmund Randolph*, pp. 120–1

legislatures very freely instructed their senators, in some cases demanding the resignations of those who refused compliance.[29] It was not until the Whig party, which opposed the "doctrine of instructions," came into power that the practice fell into disuse.

In the course of American political development particularist sentiment has penetrated Congress to such an extent that an accurate reflection of public opinion throughout the country is impossible. Members of the House of Representatives, in order to assure themselves of re-election, are so intent upon gratifying the demands of the peculiar interests of their districts that they have been reduced from the position of legislators for the entire nation to that of "ambassadors of local interests." Every session of Congress presents a spectacle of that "confused and scuffling bustle of local agency" against which Burke gave warning if representatives were not permitted to act upon a very enlarged view of things. "Our representa-

[29] For examples of instructions by State legislatures, see T. H. Benton, *Abridgment of Debates in Congress*, XII, pp. 578–9; XIII, p. 154. H. Niles, *Register*, XI, p. 407; XLVII, p. 317; LVI, p. 99; LVII, pp. 203, 308; LXIII, p. 247; LXV, pp. 381, 397. *Congressional Globe*, 28th Cong., 1 Sess., XIII, p. 250. *Senate Journal*, 33rd Cong., 1 Sess., p. 478. *ibid.*, 35th Cong., 1 Sess., p. 402

tives at Washington now are occupied with the division of the spoils of office, the procuring of appropriations for their districts or even appropriations and favors for certain persons and interests therein, and in 'building their fences' generally rather than studying the welfare of the entire United States."[30]

But it is in the Senate that the evils of local sentiment and special interests have become most pernicious. The member of the lower House whose constituents expect him to get for them a bit of "pork" finds that each of his colleagues has constituents who entertain similar expectations. The people of no State and no section of the country have a monopoly of human greed; that is rather evenly diffused throughout the entire United States. As long as there are voters who act upon the belief that "Uncle Sam is rich enough to buy us all a farm," selfish legislation may be expected, whether it takes the form of useless appropriations for the improvement of rivers and harbors or a bonus for able-bodied veterans of the World War. Such measures indicate a low standard of public morals for which the only remedy is to be found in a more widespread education of the

[30] W. S. Myers, *American Democracy Today*, p. 86

electorate. In the Senate, however, the system of representation encourages the formation of agricultural and other "blocs," which negative majority rule and foster class legislation wholly inconsistent with the spirit of democracy.

As a result of the equal representation of States in the Senate, there are at present eighteen States, electing thirty-six senators, the total population of which is less than that of the State of New York and only slightly larger than the population of Pennsylvania. If the principle that "the majority of people wherever found ought in all questions to govern the minority" should be adopted, the twenty-two States west of the Mississippi River would be obliged to submit to a reduction of forty per cent in their representation in the upper House of Congress. The senators from the six States in the Northwest who have been most conspicuous in the "agricultural bloc" represent only ten millions of people while the senators from the six New England States from whom the ascendency in Congress has been wrested, have only about seven million constituents.

The States which are over-represented in the Senate offer easy opportunities for the radical and the demagogue to intermeddle with the en-

actment of legislation. It is unnecessary for special interests to align themselves with a political party when they may control the government by dictating the votes of a handful of senators. Class legislation has thus been enacted by men who openly seek and receive the support of voters under the label of one or the other of the two great political parties. The Grand Army of the Republic never required the formation of a political party, since its members were so distributed throughout the States that it could always make its influence felt in senatorial elections. The American Federation of Labor appears to have appreciated and made use of the tactics of the veterans of the Civil War, and the American Legion may be expected to inherit the same tradition.

The diminished prestige of popular assemblies is a world-wide characteristic of the representative system. But in the United States the decline of Congress as "the nation's Committee of Grievances and its Congress of Opinions" has witnessed a corresponding increase in the representative character of the presidency. The principle of representation was from the beginning thought to extend to the executive as well as the other departments of government. A great advantage

was claimed over England in that the Constitution of the United States extended the theory and practice of representation through the entire political structure, whereas in the former country it was limited to one branch of the legislature. "The President of the United States will be himself the representative of the people," said Hamilton in the New York convention. "From the competition which ever subsists between the branches of the government, the President will be induced to protect their rights, whenever they are invaded by either branch."[31]

The idea that the President as the representative of the people would carry on the administration was familiar enough in 1787. "Our President will be the British Minister," said Gouverneur Morris. It was necessary to surround him with adequate safeguards against domination by the legislature. "The preservation of republican government," declared Madison, "therefore required some expedient for the purpose, but required evidently at the same time that in devising it, the genuine principles of that form should be kept in view." According to Gouverneur Morris, "the one great object of the executive is to control the

[31] *Works*, II, p. 21

legislature. The legislature will continually seek to aggrandize and perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose. It is necessary then that the executive magistrate should be the guardian of the people, even of the lower classes, against the great and wealthy who in the course of things will necessarily compose the legislative body. . . . The check provided in the second branch was not meant as a check on legislative usurpations of power, but on the abuse of lawful powers, on the propensity of the first branch to legislate too much to run into projects of paper money and similar expedients. It is no check on legislative tyranny. On the contrary, it may favor it; and if the first branch may be seduced, may find the means of its success. The executive therefore ought to be so constituted as to be the great protector of the mass of the people."[32] With this reasoning Madison agreed, asserting that "if it be a fundamental principle of free government that the legislative, executive and judiciary powers should be *separately* exercised, it is equally so that they be *independently* exercised."[33]

[32] Farrand, II, p. 52
[33] *ibid.*, p. 56

Nevertheless the independence of the executive and legislative departments of government was not intended to establish the President as a dictator over Congress. The possession of the veto and the power to recommend to Congress such measures as he shall judge necessary and expedient were for the protection of the constitutional position of the executive. The rise of the President to a position where he may engage in the competition with the other branches of the government which Hamilton predicted would take place is wholly adventitious.

Circumstances wholly unforeseen by the framers of the Constitution have conspired to elevate the office of President. With the growth of the party system the President has come to be regarded as the head of his party. After his nomination by the convention he is expected to represent the party before public opinion, and to stand before the country as the exponent of the purposes and principles of the party. Above all he is expected to achieve the victory for himself and his party ticket at the election. From the moment when the machinery of the electoral college passed under the control of a system of popular election, the presidency acquired a direct popular character.

The idea of executive stewardship which underlies the newer conception of the presidency recalls the notion of a "patriot king" at the head of a dominant party which Bolingbroke advanced in the eighteenth century. The theory found its ablest apologist in President Roosevelt, who insisted that "the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by Congress under its constitutional powers." In explanation of the principles which guided him throughout his administration of the presidency, Mr. Roosevelt said: "My view was that every executive officer, and above all every executive officer in high position, was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the nation demanded unless such action was forbidden by the Constitution or by the laws. Under

this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of the departments. I did not usurp powers, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare, I acted for the common well-being of all our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition."[34]

Undoubtedly the great mass of the people gave Mr. Roosevelt their support, but the dangers which attend the exercise of a theory that the President "is to play the part of a universal providence and set all things right, and that anything that in his judgment will help the people he ought to do, unless he is expressly forbidden not to do it," have been pointed out by his successor in the White House. At the same time Mr. Taft found that his own theory of the presidency was unworkable. He believed "that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included within such express grant as proper and necessary to its exer-

[34] *Autobiography*, pp. 371–2

cise. Such specific grant must be either in the Federal Constitution or in an act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to him to be in the public interest. . . . "[35] But when he was confronted with a serious upheaval within the membership of his own party in the House of Representatives in 1910, Mr. Taft was unable to provide the leadership necessary to maintain party solidarity. He failed not only to keep faith with the people by bringing about the enactment into legislation of the party pledges of 1908 but also allowed the control of his partisans in Congress to slip from his hands. His decisive defeat in the election of 1912 was indication that the people expect in the President a leader who can at least compel the members of his own party in Congress to adhere to their platform promises.

While the President is expected to assume the leadership of Congress, it is clear that he cannot set his will in opposition to that of a majority of the people. Woodrow Wilson came to the presidency with a theory of the functions of the executive not essentially different from that of Mr.

[35] W. H. Taft, *Our Chief Magistrate and His Powers*, pp. 140–1

Roosevelt.[36] He had behind him a majority of his own party in both Houses of Congress when he first put his theory into practice. It is true that many members, especially in the lower House, were inexperienced and looked to the President for guidance. But there were sinister interests both in and outside of Congress which Mr. Wilson had to combat. Throughout his first administration he skilfully held the leaders in Congress to the important matters of legislation to which the Democratic party had given its pledge in the campaign. In matters of foreign policy he followed the currents of popular opinion so closely that he was able to appear before the governments of Europe, as well as the Congress of the United States, as the spokesman of a united people. For almost six years Mr. Wilson ably represented not only the controlling ideals and principles of his party but also the political sentiment of a majority of the American people. It was not until he attempted to dictate to the people themsleves in the congressional elections of 1918 and sought at Paris to commit the United States to a treaty of peace which did not accord with the traditional foreign policy of the nation that he

[36] Wilson, *Constitutional Government in the United States*, pp. 60, 67–8, 79

lost the support of public opinion. Without the backing of the people, his position as leader became untenable and he soon met defeat at the hands of Congress.

The growth of executive power in the United States recalls the fears of an elective monarchy which excited some of the members of the Federal Convention.[37] Roger Sherman, in debating the veto power of the President, "was against enabling any one man to stop the will of the whole. No one man could be found so far above the rest in wisdom. He thought we ought to avail ourselves of his wisdom in revising the laws, but not permit him to overrule the decided and cool opinions of the legislature."[38] But the truth is that the President has emerged as the representative of the people as a whole because the legislature does not reflect "the will of the whole." Engaged in the rivalry of purely local concerns, the representatives of the people in Congress have lost a proper perspective with regard to matters of general policy. The President remains as the only available exponent of the general sentiment. That is not to say that he enjoys arbitrary power,

[37] Dunbar, *Monarchical Tendencies in the United States*, pp. 79 *ff.*
[38] Farrand, I, p. 99

"for he is constantly under the check of public criticism and the common sentiment, which he ignores at his peril." His assumption of leadership instead of marking the decline of the national government toward despotism is in fact "only a phase of the tendency toward a greater measure of direct popular control."[39]

The situation created by this development is one of divided representation. It is assumed quite frankly that the representative assembly is insufficient in itself to reflect the opinion of the nation, which demands that the issues shall be defined by someone in a position to act upon an enlarged view of things. At the same time there has been no movement toward making the President responsible to Congress. This fact is certainly a mute witness of the extraordinary degradation of legislative authority in the United States.

Since the day of John Stuart Mill it has been apparent that dangers lurk in the division of representation, and the new governments of Europe have not been modelled on the American system.[40]

[39] See remarks of Mr. Charles Evans Hughes before the Phi Beta Kappa Society at Harvard University on June 30, 1910, while Mr. Hughes was Governor of the State of New York. Quoted in E. Stanwood, *History of the Presidency*, II, pp. 240–2

[40] McBain and Rogers, *New Constitutions of Europe*, Chap. II

Undoubtedly it seems incongruous that a democracy should bestow the executive power upon a single individual for a period of four years, subject to no positive control or supervision except through the clumsy expedient of impeachment. Perhaps the scheme of popular election places fewer eminent men in the presidency than if the chief magistrate were selected by the dominant party in the representative assembly. It was an English critic of American political institutions who explained "why great men are not chosen Presidents."[41]

Nevertheless the principle of representation was adopted in the United States to give effect to the sovereignty of the people. "It is useless to call the sovereignty of the people effective if the organs through which it works fail to do justice to the popular desire."[42] The popular will has not been discoverable, as the framers of the Constitution believed, through the exchange of opinions from the legislative districts. Experience has shown that "the sum or a combination of local impressions is not a wide enough base for national policy, and no base at all for the control of foreign

[41] J. Bryce, *American Commonwealth*, I, Chap. VIII
[42] H. J. Laski, *Foundations of Sovereignty*, p. 222

policy."[43] The absorption of power by the executive indicates merely that the popular will finds a better means of expression in the President than in Congress. In the process of government it may have been the intention of the framers of the Constitution that the President should "stand the mediator between the intrigues and sinister views of the representatives and the general liberties and interests of the people;"[44] experience has shown that in the President is to be found the leadership essential to democracy.

[43] W. Lippmann, *Public Opinion*, p. 288
[44] Farrand, II, p. 30

CHAPTER III

The Forms of Government

THE form of government set up in the Constitution was regarded by its founders as the only one which was "reconcilable with the genius of the people of America," and at the same time adequate to govern the large extent of territory within the United States. It was by them denominated republican. According to the eighteenth century formula, republican government was compounded by engrafting representation upon democracy. "As long as the offices are open to all men," said Hamilton, "and no constitutional rank is established, it is pure republicanism."[1] This concise definition is in no way inconsistent with the longer and more famous one by James Madison,[2] but it does not take into account the evils of democracy which practical arrangements were expected to cure. To convert theory into practice it was thought necessary to guard against abuse of power by the partition and limitation of

[1] Farrand, I, p. 432
[2] *Federalist*, No. 39

authority. That is to say, stability was to be maintained in the government through the introduction of a system of checks and balances. The result was to create precisely the form of government declared by Rousseau to be incompatible with the existence of liberty.

Unlike the French philosopher, the men of 1787 were confronted with a practical problem. Charles Pinckney told the constitutional convention that "all we have to do is to distribute the powers of government in such a manner, and for such limited periods, as while it gives a proper degree of permanency to the magistrate, will reserve to the people the right of election which they will not or ought not frequently to part with."[3] But the task was not so readily performed; conflicting forces had to be calculated and given their due weight in the political system under construction.

The crucial moment in the formation of the Constitution came in the debate on representation. Here the impact of the democratic spirit of the frontier and interior regions upon the conservatism of the seaboard was most direct. For thirty-one days the members of the convention

[3] Farrand, I, p. 404

struggled in the stifling summer heat of Philadelphia before they reached a solution of the difficulty. As Madison said, "the great difficulty lies in the affair of representation; and if this could be adjusted, all others would be surmounted."[4] In point of fact, the solution of this problem involved nothing less than the reconciliation of the American conception of democracy with efficient government.

Despite the strength of the propertied classes in the convention, the adoption of the idea of representation was not conditioned upon the reflection of economic or occupational interests. Modern systems of representation in Europe have in most instances evolved out of the representation of three or more classes or estates. Frequently each class has not only been represented by persons of its own choice, but each class has had a house of its own through which the interests of the group were expressed in the government. European adaptations of the representative system have not sought to reflect the opinions of mere numerical aggregations of human beings considered apart from property and employment. On the contrary, they have reflected the senti-

[4] *ibid.*, p. 321

ments and views of different estates or classes of men: clergy, nobility, landed gentry, burghers, and peasants.[5]

If it had been suggested to the leaders of the Federal Convention that special provision had not been made for the representation of the various economic interests in the United States, they would undoubtedly have been surprised. They thought that the representation of economic interests was secured from the very nature of the government itself. James Madison, although he accepted the rule of numbers as the basis of representation, believed that class distinctions would penetrate the legislative assemblies. "Many of the most important acts of legislation," he thought, would be "but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens." The different classes of legislators, he concluded, would be merely "advocates and parties to the causes which they determine."[6]

Perceiving the logical justification for group representation, Madison argued that the interests of no important class should be left entirely

[5] C. A. Beard, *Economic Basis of Politics*, Chap. II
[6] *Federalist*, No. 10

to the care of other classes. "It was politic as well as just," he said, "that the interests and rights of every class should be duly represented and understood in the public councils. It was a provision everywhere established that the country should be divided into districts and representatives taken from each, in order that the legislative assembly might equally understand and sympathize with the rights of the people in every part of the community. It was not less proper that every class of citizens should have an opportunity of making their rights be felt and understood in the public councils. The three principal classes into which our citizens were divisible were the landed, the commercial, and the manufacturing. The second and third classes bear as yet a small proportion to the first. The proportion will however daily increase. We see in the populous countries in Europe, what we shall be hereafter. These classes understand much less of each others interests and affairs than men of the same class inhabiting different districts. It is particularly requisite therefore that the interests of one or two of them should not be left entirely to the care or imparitality of the third."[7]

[7] Farrand, II, p. 124

At the same time, Madison "could not agree that any substantial objection lay against fixing numbers for the perpetual standard of representation."[8] He later examined the question with great care and concluded that "under every view of the subject, it seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them, and if the alternative be between an equal and uniform right of suffrage for each branch of the government and a confinement of the *entire* right to a part of the citizens, it is better that those having the greater interest at stake, namely that of property and persons both, should be deprived of half their share in the government than that those having the lesser interest, that of personal rights only, should be deprived of the whole."[9]

Hamilton, in the thirty-fifth number of the *Federalist*, thought that the interdependence of economic groups was so great that no distinctions could be made in the apportionment of representatives. He said: "The idea of an actual represen-

[8]Farrand, I, p. 585
[9]*ibid.*, III, pp. 454–5

tation of all classes of the people, by persons of each class, is altogether visionary. Unless it were actually provided in the Constitution, that each different occupation should send one or more members, the thing would never take place in practice. Mechanics and manufacturers will always be inclined, with few exceptions, to give their votes to merchants, in preference to persons of their own professions or trades. Those discerning citizens are well aware that the mechanic and manufacturing arts furnish the materials of mercantile enterprise and industry. Many of them, indeed, are immediately connected with the operations of commerce. They know that the merchant is their natural patron and friend; and they are aware, that however great the confidence they may justly feel in their own good sense, their interests can be more effectually promoted by the merchant than by themselves. They are sensible that their habits in life have not been such as to give them those acquired endowments, without which, in a deliberative assembly, the greatest natural abilities are for the most part useless; and that the influence and weight, and superior acquirements of the merchants render them more equal to a contest with any spirit which might

happen to infuse itself into the public councils, unfriendly to the manufacturing and trading interests. These considerations, and many others that might be mentioned, prove, and experience confirms it, that artisans and manufacturers will commonly be disposed to bestow their votes upon merchants and those whom they recommend. We must therefore consider merchants as the natural representatives of all these classes of the community.

"With regard to the learned professions, little need be observed; they truly form no distinct interest in society, and according to their situation and talents, will be indiscriminately the objects of the confidence and choice of each other, and of other parts of the community.

"Nothing remains but the landed interest; and this, in a political view, and particularly in relation to taxes, I take to be perfectly united, from the wealthiest landlord down to the poorest tenant. No tax can be laid on land which will not affect the proprietor of millions of acres as well as the proprietor of a single acre. Every landholder will therefore have a common interest to keep the taxes on land as low as possible; and common interest may always be reckoned upon

as the surest bond of sympathy. But if we could even suppose a distinction of interest between the opulent landholder and the middling farmer, what reason is there to conclude that the first would stand a better chance of being deputed to the national legislature than the last? If we take fact as our guide, and look into our own senate and assembly, we shall find that moderate proprietors of land prevail in both; nor is this less the case in the senate, which consists of a smaller number, than in the assembly, which is composed of a greater number. Where the qualifications of the electors are the same, whether they have to choose a small or a large number, their votes will fall upon those in whom they have the most confidence; whether these happen to be men of large fortunes, or of moderate property, or of no property at all.

"It is said to be necessary, that all classes of citizens should have some of their own number in the representative body, in order that their feelings and interests may be the better understood and attended to. But we have seen that this will never happen under any arrangement that leaves the votes of the people free. Where this is the case, the representative body, with too

few exceptions to have any influence on the spirit of government, will be composed of landholders, merchants, and men of the learned professions."

Group representation requires stability in the groups to be represented. Unless these groups are fixed and unchangeable, constant revision of the basis of apportionment must be undertaken. Nobody would pretend today that the classes mentioned by Hamilton are the only ones which have political aspirations. But the emergence of other groups influential in governmental affairs tends to emphasize the mutability of social classes. Variations in the social structure are due to the existing system and are not fundamental. When agriculture was the only important industry in this country, freehold qualifications for the suffrage could be indulged without serious contravention of the principle of democracy. But the growth of commerce and manufactures introduced many new groups whose members held property in forms other than land, or in whom was vested the ownership of no property at all. The impermanence of social and economic groups, wisely foreseen by the members of the Federal Convention, compelled in a later generation the removal from the State constitutions of all restrictions upon the suffrage.

Property qualifications illustrated the maxim of John Jay that "those who own the country ought to govern it." But the changes in social organization revealed the fallacy of this maxim, in that ownership does not consist in technical title to property. The Massachusetts constitutional convention of 1820, in providing that all who paid a State or county tax should vote, recognized the transformation which was taking place in American society. Even the tax-paying qualification was opposed at this time on the ground that it would shut out some of the workingmen. "It was all the more important," said one delegate, "that workers should vote. Otherwise they would array themselves against the laws; mix them with the good part of society and you disarm them."[10] In the midst of social changes it was sophistry to argue for the continuance of the political institutions of a bygone era.

The rise, growth and decline of social and economic groups is inevitable because of the rapid and continuous changes which take place in the composition of the groups. Men and women do not remain in the social positions in which they were born nor cling through life to the same eco-

[10] Massachusetts Convention 1820, *Debates*, p. 253

nomic pursuits. George Mason reminded the members of the Philadelphia Convention that they "ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy, considering that however affluent their circumstances, or elevated their situations, might be, the course of a few years, not only might but certainly would, distribute their posterity throughout the lowest classes of society. Every selfish motive therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest order of citizens."[11]

Most advocates of group representation fall into the error of ascribing to economic interests a preeminent position in the social process. That is to say, they are content to invoke as the sole cause of social change the economic needs of man and their satisfactions without consideration of other elements. John Stuart Mill long ago pointed out "how far mere physical and economic power is from being the whole of social power."[12]

[11] Farrand, I, p. 49
[12] *Representative Government*, p. 84

Although extremists still argue from the standpoint of economic determinism, the growth of democracy in the United States cannot be referred in any great degree to economic influences. Material interests are a part of the great social forces which influence the destiny of man. But all social forces react upon the wills and thoughts of men and become effective in so far as they are embodied in human contrivances. The mind of man is therefore in itself a great force which may modify environmental factors. Among the various political institutions there exists the possibility of a rational choice. But if stability in the government is to be attained, the choice must rest upon those arrangements which are consistent with the permanent not the transitory interests of the people, the spiritual rather than the material purposes of society.[13]

[13] There have been few proposals to introduce group representation in the government of the United States. Two such proposals are: W. MacDonald, *A New Constitution for a New America*, p. 138, and H. A. Overstreet, "The Government of To-Morrow," *Forum*, LIV, p. 10. Political writers who would extend the principle of group representation to the United States lose sight of the important fact that the President cannot be made the representative of economic groups. He must be the representative of the entire electorate. In the cabinet system of government it is entirely possible to set up a ministry which shall carry on the work of administration and at the same time represent different economic groups within the state. But the Constitution of the United States is a standing repudiation of the principle of group representa-

In theory the members of the Philadelphia Convention clung to the idea that the basis of representation should rest solely on the number of inhabitants. The departure from the principle in the establishment of equal representation in the Senate was forced by the necessity of recon-

tion. The whole question of elections turns on that of the President. He can be the representative of but one party or group.

Group representation has been given serious consideration in France. M. Charles Benoist, as far back as 1895, advocated the election of a Chamber of Deputies by voters grouped into seven classes according to their professions. The notion of a public sentiment he denounced as a great myth, and worked out a unique scheme of functional representation combined with proportional representation whereby the various groups might combine to secure a voice in the government. Benoist, *La crise de l'état moderne, de l'organisation du suffrage universel* and *Pour la réforme électorale.* A somewhat different scheme has been suggested by M. Leon Duguit of the Faculty of Law in the University of Bordeaux. M. Duguit argues that "if we would secure in the parliament the representation of all the elements of the national life, it is necessary to place beside the assembly elected by the people proportioned according to the numerical strength of the different parties, an assembly elected by the professional groups." That is not to say that the representation is to be of the interests of small groups, but is to be "truly a representation of the different industrial and artistic forces which are effective in the country, and which are . . . elements of the highest importance in the national life." In the lower house of the legislature the representation should be that of the people, while the second chamber should represent "more particularly the social groups, following such a system as the art of politics shall determine for each country." Duguit, *Droit constitutionnel* (2nd ed.), II, pp. 560, 596, 598. The League of Professional Representation and Regionalist Action presented a scheme of professional representation to the Chamber of Deputies on April 29, 1915. J. Hennessy, *Régions de France,* pp. 229–30. See also Charles Brun, *Le régionalisme* (1911). The proposition was not adopted by the Chamber of Deputies in 1915; and in a more

ciling conflicting interests. At the same time it was fully recognized that the sacrifice of principles to a supposed interest was fraught with danger.

The evil inherent in the scheme of equal representation was vigorously attacked by Wilson.

recent regionalist bill prepared by the Administration Commission the provision for group representation has been omitted. The omission was caused by the failure to agree upon a principle whereby the share of each association in the deliberations of the regional council could be determined. "The practical difficulties in the proper representation of these interests appeared so insurmountable to the Commission that it was unanimous in deciding that the members of the Regional Council should hold their powers from the whole of the electoral body." Hennessy, *Réorganisation administrative de la France*, p. 160. The failure becomes significant in view of the fact that professional organization is undoubtedly the most marked characteristic of present day French society.

In England the Guild Socialists under the leadership of G. D. H. Cole have evolved a scheme which would transform the present state. Asserting that "the omnicompetent state, with its omnicompetent parliament, is utterly unsuited to any really democratic community, and must be destroyed or painlessly extinguished," Mr. Cole would divide economic and political power among a number of independent functional associations. His idea of the essentials of democratic representation are, "first, that the represented shall have free choice of, constant contact with, and considerable control over, his representative. The second is that he should be called upon, not to choose some one to represent him as a man or as a citizen in all the aspects of citizenship, but only to choose some one to represent his point of view in relation to some particular purpose or group of purposes, in other words, some particular *function*. All true and democratic representation is therefore *functional* representation." In order to bring the political system into harmony with the functional principle, it is necessary to divest the state of control over economic, religious and other activities which do not affect all members of society to the same extent and in the same

"The rule of suffrage," he said, "ought on every principle to be the same in the second branch as in the first branch. If the government be not laid on this foundation, it can be neither solid nor lasting. Any other principle will be local, confined and temporary. . . . [14] If equality in the second branch was an error that time would correct, he should be less anxious to exclude it, being sensible that perfection was unattainable in any plan; but being a fundamental and a perpetual error, it ought by all means to be avoided. A vice in the representation, like an error in the first

way. Only very general functions would be allocated to a body representing society as a whole. All other functions would be distributed among the guilds, each of which includes only those persons who stand in peculiar relationship to the service or interest which is the exclusive concern of the guild. The state is thus brought down to a level with the other associations. Cole, *Guild Socialism*. See also Niles Carpenter, *Guild Socialism* (1922).

The framers of the constitution for the new German Republic have recognized the principle of group representation to a limited extent in the establishment of the Economic Council. "Before proposing drafts of politico-social and politico-economic bills of fundamental importance," the Ministry must submit them to this council for consideration. Moreover, the council may itself propose bills and may submit them to and defend them before the Reichstag even over the protest of the Ministry. Although the Economic Council has only advisory powers it may grow in public confidence and esteem until it exerts a real influence in the government. R. Brunet, *The New German Constitution*, pp. 80 *ff*. McBain and Rogers, *The New Constitutions of Europe*, p. 122

[14] Farrand, I, p. 483

concoction, must be followed by disease, convulsions, and death itself."[15] Selfish particularism is an ill which seldom finds a cure unless administered by a despot.

Gouverneur Morris was even more vehement in denouncing the danger threatened by the protagonists of equal representation. "Good God, Sir," he cried, "is it possible they can so delude themselves. . . . It had been said that the new government would be partly national, partly federal; that it ought in the first quality to protect individuals; in the second, the States. But in what quality was it to protect the aggregate interest of the whole?" Morris begged the convention to look at Germany. "The same circumstances," he declared, "which unite the people here, unite them in Germany. They have there a common language, a common law, common usages and manners, and a common interest in being united; yet their local jurisdictions destroy every tie. The case was the same in the Grecian States. The United Netherlands are at this time torn in factions. With these examples before our eyes, shall we form establishments which must necessarily produce the same effects. It is of no

[15] *ibid.*, II, p. 10

consequence from what districts the second branch shall be drawn, if it be so constituted as to yield an asylum against these evils."[16]

Yet the delegates who withstood the cogent arguments of Wilson and Gouverneur Morris could justify their position by the fact that the State systems enjoyed the confidence of the people, while the Congress under the Articles of Confederation was everywhere distrusted and despised. James Wilson reviewed the melancholy course of disruption which had in a few years destroyed the solidarity of the American nation. "Among the first sentiments expressed in the first Congress," he said, "one was that Virginia is no more, that Massachusetts is no more, that Pennsylvania is no more, etc. We are now one nation of brethren. We must bury all local interests and distinctions. This language continued for some time. No sooner were the State governments formed than their jealousy and ambition began to display themselves. Each endeavored to cut a slice from the common loaf, to add to his morsel, till at length the confederation became frittered down to the impotent condition in which it now stands."[17]

[16] Farrand, I, p. 552
[17] *ibid.*, p. 166

To be sure, the convention had been called to alter the Articles of Confederation so as to arrest the centrifugal forces of State loyalty. But in 1787 State boundaries were important factors in separating the people of the United States. State governments were known and trusted; they had carried the people through the war with Great Britain while the impotent Congress of the Confederation had been unable to achieve the objects for which it was created. It followed that not only did men distrust a national government, but they also failed to understand that two jurisdictions largely coordinate could work toward a similar end. They imagined that coordination meant antithesis, and feared lest the surrender of a portion of the power wielded by the States would end in the destruction of personal liberty. It could therefore be argued that the national government must rest in part upon the States.

Today the States have declined in importance, although the representation given them in the Senate allows them a specious control in the national government. The States have, in effect, become the "rotten boroughs" of the United States. The Seventeenth Amendment removes from senators the character of representatives of State gov-

ernments, but it allows unequal representation to groups based upon territorial propinquity. In the interest of democracy a further amendment of the Constitution is required which will deprive the States of their equal representation in the Senate. Senators, no less than members of the House of Representatives, should be apportioned on a basis of population. The rule of numbers is as just today as when James Wilson made his argument in the Federal Convention.

There is an obstacle in the way of the easy achievement of an apportionment of the Senate on the basis of population. The Constitution provides that no State shall be deprived of its equal representation in the Senate without its consent. It has been contended that it is entirely possible to strike out the whole of Article V, or any part of it, by the vote of two-thirds of both Houses of Congress and the assent of the legislatures of three-fourths of the States. Such course might lead to a charge of bad faith but any other view, it is argued, would involve a denial of the inalienable and inexhaustible right of the people to govern themselves.

But this view is challenged on the ground that it overlooks the fact that the guarantee of equal

suffrage in the Senate appears in the Constitution as an exception from the power of amendment. Moreover, it seeks to define as a constitutional act what is really an act of revolution. That is to say, there are some parts of the Constitution which are so fundamental as to be unchangeable by the ordinary process of amendment. A political act cannot be both constitutional and revolutionary; the terms are mutually exclusive. When changes are in contemplation which do violence to the existing system of government, the acts by which they are brought about are revolutionary and necessitate "a recurrence to first principles." That was the belief of the men of 1787 when they referred the Constitution for ratification to popular conventions.[18] It is no less true today, for a majority of two-thirds of both Houses of Congress and majorities in the legislatures of three-fourths of the States may not represent a majority of the people of the United States. Indeed, in the complex process of amending the Constitution the will of a majority of the people may never be expressed, except in the two-thirds of the members of the House of Representatives who probably were not elected on the issue pre-

[18] Farrand, II, p. 93

sented in the amendment. To maintain that the Constitution may be amended in all its parts by the process set forth in Article V is to repudiate the method by which the instrument was originally established.

The second of these views has had a history almost as old as that of the Constitution itself. When the question of amending the constitution of South Carolina was advocated in 1794 in order to adjust the representation, it was objected that "since the existing representation was fixed in the constitution it could never be altered. If the constitution was not conclusive and binding on that point it was in none. While the constitution could be amended, it was advocating a false principle to contend that the constitution was made wrong in the first place. If that were true, all parties could make objections, and instead of a bond of union the constitution would become a cause of contention and strife. The idea was that the constitution could be amended only in those points that were imperfectly covered, or to adjust it to new conditions not foreseen by its framers."[19] In the congressional elections of 1866, the Democratic party declared that the Thirteenth Amendment con-

[19] W. A. Schaper, *Sectionalism in South Carolina*, p. 374

travened the property right guaranteed by the Constitution and could not be valid. More recently Mr. Elihu Root, in an effort to overturn the prohibition amendment, argued that "Article V of the Constitution could not be construed to confer unlimited legislative power upon the amending authorities. To assume that it does is inconsistent with the plain provision of paragraph 1 of Article I of the Constitution that '*all* legislative powers herein granted shall be vested in a Congress of the United States,' and with the terms of Article V itself, as the proceedings of the Constitutional Convention disclose that the framers themselves understood those terms. The framers undoubtedly regarded the power to amend only as authorizing the inclusion of matter of the same general character as the instrument or thing to be amended; and as all the constitutions of their day were concerned solely with the distribution and limitation of the powers of government, and not with the direct exercise thereof by the constitution makers themselves, no amendment of the latter sort would have been deemed appropriate or germane by them."[20]

The question at issue in the controversy over

[20] Rhode Island v. Palmer, 253 U.S., pp. 361–4

the scope and limits of the power of amendment is really one of form. It may be admitted that any change in the existing government involves an act of revolution, but this does not necessarily require the direct assent of the people. Of course, the people cannot barter away or delegate to any other authority the right of revolution. But that is not to say that the people are prevented from giving their approval to innovations which have been proposed except through a constitutional convention. By their acquiescence in a statute enacted by Congress or a decision handed down by the Supreme Court of the United States they may change the existing government quite as radically as has been done by any constitutional amendment heretofore adopted.

The framers of the Constitution submitted their work to the ratification of popular conventions in the States because they wished to obtain prompt and unconditional approval of the sweeping changes they proposed. They looked upon the establishment of the Constitution "as an act of popular revolution, which not only overturned the Articles of Confederation, but broke through the State constitutions also at essential points."[21]

[21] E. S. Corwin, *Doctrine of Judicial Review*, p. 84

It was therefore good political tactics for them to follow the advice of Madison and to refer the Constitution for ratification to popular conventions in the States.[22]

At the same time, Madison was entirely unconcerned about the procedure by which the Constitution should be amended. Some time after the Committee of Detail had proposed that "on application of the legislatures of two-thirds of the States in the Union, for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose,"[23] Madison objected that the terms "call a convention for that purpose" were too vague. He offered a substitute proposal which would enable Congress by a vote of two-thirds of both Houses, or upon application of the legislatures of two-thirds of the States, to propose amendments which would be valid parts of the Constitution when ratified by the legislatures or by conventions in three-fourths of the States.[24] George Mason replied that if the proposal of amendments were left wholly to Congress, "no amendments of the proper kind would

[22] Farrand, II, p. 476
[23] *ibid.*, p. 188
[24] *ibid.*, pp. 557–9

ever be obtained by the people, if the government should become oppressive." In order to meet this objection, an amendment of the article was suggested so as to require a convention upon application of two-thirds of the States. Madison "did not see why Congress would not be as much bound to propose amendments applied for by two-thirds of the States as to call a convention on the like application. He saw no objection, however, against providing for a convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum, etc., which in constitutional regulations ought to be as much as possible avoided."[25] In other words, Madison in laying the basis for Article V of the Constitution regarded the amending process as a formal de-

[25]Farrand, II, pp. 629–30. Lincoln, in his First Inaugural Address, said: "I cannot be ignorant of the fact that many worthy and patriotic citizens are desirous of having the National Constitution amended. While I make no recommendation of amendments, I fully recognize the rightful authority of the people over the whole subject, to be exercised in either of the modes prescribed in the instrument itself; and I should, under existing circumstances, favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the convention mode seems preferable, in that it allows amendments to originate with the people themselves, instead of only permitting them to take or reject propositions originated by others not especially chosen for the purpose, and which might not be precisely such as they would wish to either accept or refuse." *Speeches and Letters of Abraham Lincoln*, p. 173

vice; the efficacy of an amendment, like any other part of the Constitution, would depend upon its acceptance by the people.

The difficulty of altering the Constitution with respect to the exception contained in Article V should not blind us to the fact that the equal representation of the States in the Senate is the vestige of a political environment that has passed away. The Constitution is expected to keep pace with the fundamental and permanent changes which take place in our society. Changes in the Constitution should not be undertaken for light and transient causes. At the same time, through the agencies of judicial interpretation, statutory enlargement, and party practices, new meaning is given to ancient forms. When the forms themselves can no longer be adapted to meet the conditions and problems surrounding the people, as well as their ideals, they must be discarded.

Although the States have ceased to be a factor in dividing the people of the United States into distinct groups, sectional differences prevail. "As the States have declined, sectional self-consciousness has arisen."[26] That is to say, the differences between sections in economic interests mean also

[26] Turner, "Sections and Nation," *Yale Review*, XII, p. 10

differences in political ideas. New England, the Middle Atlantic States, the South, the Mississippi valley, and the Pacific coast have distinct differences which are reflected in political sentiment. Indeed, this was true in 1787. Madison "conceived that the difference of interest in the United States lay not between the large and the small, but the Northern and the Southern States."[27] But the real difference was constantly obscured by the alignment of the large and small States into distinct parties in the convention.

The people of the United States fall into six more or less distinct groups which differ in social and economic interests. New England, the Middle Atlantic States, and the Old Northwest between the Great Lakes and the Ohio River form sections each of which has its own particular interests. The South, the trans-Mississippi Middle West extending to the Rocky Mountains, and the Pacific coast are also distinct groupings according to economic interests and social characteristics. For the most part the States which are included in the sectional groupings contain homogeneous populations. But in some cases the sectional divisions cut across State boundaries. It is clear, for

[27] Farrand, I, p. 601

example, that the southeastern counties in Wisconsin belong to the Old Northwest while the interests of the rest of the State coincide with those of the territory immediately beyond the Mississippi River.

If the members of the Senate were selected from sections instead of States, and the apportionment were made on a basis of population, the people would be represented in proportion to their numerical strength throughout the country. At the same time, this new regionalism would enable the various economic interests to display their strength in the elections.

Another advantage which would be derived from sectional groupings would be the ease with which the decentralization of administration could be accomplished. The growing demand for the regulation of business by the government has tended toward the creation of a bureaucracy at Washington not in harmony with the spirit of democracy. One step toward the correction of this defect was taken in the establishment of the Federal Reserve System. Further steps should be taken along the same line with the Interstate Commerce Commission and other governmental agencies. In each section the agencies should

be practically autonomous, within the powers granted by the Constitution and the acts of Congress. Such administrative reorganization should be accompanied by the regional reorganization of the railroads in the United States.

A further reform which has many earnest advocates looks toward the restriction of the suffrage. Limitations upon the exercise of the franchise were urged by John Stuart Mill in the interest of democracy. Among the conditions which Mill laid down as essential to the success of representative government were a willingness and an ability on the part of the people to do what is necessary to keep it standing, and to do what is required of them to enable it to fulfil its purposes. Neither of these conditions can be met by an electorate that is vicious or illiterate.

At the time of the framing of the Constitution it was believed that "all persons should have a voice in the government, except those who are in so mean a situation that they are esteemed to have no will of their own."[28] But there was no agreement as to the precise method of determining this question. John Adams advocated a small property qualification,[29] and Madison and Frank-

[28] Hamilton, *Works*, I, p. 90
[29] *Works*, V, p. 457

lin at one time would have excluded from the suffrage all but landowners.[30] Even Jefferson approved the provision in the Spanish constitution of 1814 which disfranchised the illiterate.[31] Many held the view that the unpropertied had no political opinion. While nobody would today argue that political wisdom resides exclusively in the owners of property, it is a pertinent inquiry whether we have not gone too far in granting suffrage to persons who are incapable of the intelligent use of the privilege.

The enfranchisement of illiterates in the United States did not begin with the enforcement of the Fifteenth Amendment. Although the highest percentage of illiteracy is to be found among the residents of States having large negro populations, the ignorant immigrant has been a problem since before the Civil War. In the States of the Northwest admitted into the Union a decade or two before 1860, foreigners were encouraged to settle and were given the opportunity to participate in the government upon the simple declaration of intention to become citizens.[32] In many cases the

[30] Elliot, *Debates*, V, p. 387; Benj. Franklin, *Works*, IV, pp. 221, 224
[31] *Works*, VI, p. 592
[32] Porter, *Suffrage in the United States*, Chap. V

succeeding generations justified the liberal franchise privileges extended to their forebears. But a generous policy of immigration brought to our shores millions of Europeans who could not grasp the meaning of democracy. They could conceive of government only in terms of a proletarian despotism, whereby they sought with the inversion of social classes to perpetuate the autocratic political systems of Europe. It is not without significance that the names which appear on the ballot in the columns of parties dedicated to the establishment of cheap and tawdry forms of socialism are those of men who are foreign born or of immediate foreign ancestry.

The extent of illiteracy among the people of the United States has only recently been revealed. The census of 1920 indicated that there were 4,931,905 illiterates over the age of ten years of whom 4,331,111 persons had reached the voting age. But the census definition of illiteracy is no schooling whatever. The army psychological tests are much more adequate in determining the qualifications of individuals with respect to literacy. In these tests the ability to read and understand newspapers and similar printed matter and to write letters home in English was indicative of

literacy on the part of the candidate. The results showed that 24.9 per cent of the 1,552,256 men between the ages of twenty-one and thirty-one examined in connection with the psychological tests were illiterate.

Literacy tests have been adopted in the election laws of at least twenty States at various times. Sometimes the tests have been used to exclude from voting persons whose exercise of the franchise would not be to the liking of the dominant political party. But more often the test never revealed the intelligence of the voter at all. The requirement in Massachusetts that the voter be able to read certain sections of the State constitution was deemed to be met if the clauses were read intelligibly although the voter might have no intelligent appreciation of their contents.

The first State to adopt a literacy test that is really adequate is New York. The law provides that "after January 1, 1922, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English."[33] Suitable tests have been prepared which require the "new voter" to show

[33] New York Constitution, Article XI, Section 1

the same ability to read and write that would be expected of the average child who had completed the sixth grade in the New York schools. In 1923 the tests were taken by 25,199 persons, of whom 21.4 per cent failed. In 1924 the number taking the tests rose to 61, 144, of whom only 16.1 per cent failed. The failures in New York City were somewhat higher, amounting to about 20 per cent of the entire number who took the tests.[34]

External devices cannot create democracy, but democracy requires machinery through which the popular will may find realization in governmental action. Democracy in the United States means the supremacy of the numerical majority. A system of governmental checks and balances which thwarts rather than subserves the popular will can have no place in a democratic state. It was

[34] Comment on the operation of the literacy law in New York will be found in the University of the State of New York Bulletin to the Schools, March 2, 1925, p. 169. The following table presents the data for the past two years:

Certificates issued	1923	1924
On day school credentials	7,929	13,848
On evening school credentials	767	1,288
On passing of Regents' test	19,806	48,888
No. failed Regents' test	5,393	12,256
Per cent of failures	21.4	16.1
No. issued in cities	21,113	53,936
No. issued in villages	1,147	2,899
No. issued in rural districts	6,142	7,187
Total issued in State	28,402	64,022

Alexander Hamilton who argued that simple forms of government alone are appropriate in a democracy.[35] Hamilton realized that democracy becomes effective only through leadership and with the ready and intimate coordination of the various departments of the government to reflect the will of the people. He recognized what Harrington and John Adams did not admit, that even in "a government of laws," the work must be done by men.

It was a great king of Israel who discerned the true basis of rulership when he asked that he be given an understanding heart. He realized that a state whose rulers have not wisdom cannot long endure. This is all the more true in a democracy where a full and free play of the critical spirit is essential to honest and efficient government. Without the exercise of discriminating judgment, a people cannot long govern themselves. The power supposed to vest in the people becomes in fact lodged in the politician whose knowledge of tactics enables him to organize human intelligence and human impulses to promote his own ends.

The discrimination required of a people who are

[35] *Works*, IX, pp. 71–2

to govern themselves can result only from their education. "The best laws," said Aristotle, "will be of no avail unless the young are trained by habit and education in the spirit of the constitution."[36] Are we in the United States providing this type of education? The question is too big here to be answered. Our colleges are expected to train their young men and young women for the ostensible world, which is the world of business. Can a system of education designed to increase the acquisitive capacity of the individual also provide the ethical discipline necessary in a people who are to undertake the task of self-government? A recent writer has remarked that the education of the older generation in America "aimed to produce leaders and, as it perceived, the basis of leadership is not commercial or industrial efficiency, but wisdom."[37] That is to say, the older education was a training for wisdom and character. Since it was based on the belief that men need to be disciplined to some ethical center, it taught the conquest of self which is the first requisite of leadership. If the education of today cannot somehow inculcate the principle of control, the failure

[36] *Politics*, Book V, ix
[37] I. Babbitt, *Democracy and Leadership*, p. 304

of democracy from the want of leadership is only a matter of time.

There is an intimate relationship between the system of education in a country and the forms of its government. Ten years ago one of the most brilliant of the younger German economists came to the United States to tell us that the avenues by which men advance from one economic or social level to another are closed. Therefore it was the duty of education, he thought, to train men and women to be happy in the social status in which they were born. In other words, he revived the idea of a static equilibrium of social classes which captivated the ancient Greeks and led them to adopt it as the basis of their definition of justice. But since November 11, 1918, neither the forms of government nor the system of education lauded in Germany ten years ago have found a sympathetic response throughout the world.

Government is power. That power must be lodged somewhere in the state and find the means of its exercise is inherent in the very nature of government. Since the day of John Locke we have looked to the community as a whole for the original and supreme will which organizes the government and defines its just powers. We have

discovered what was not apparent to some of the men of 1787, that the popular will does not emerge as a spontaneous emanation from the thoughts of men. It is therefore not enough in a democracy to insure the accuracy of public opinion. A democracy also requires the leadership of men and women trained in the ethical spirit of popular government.

Whether it can ever be possible to formulate a theory of the state depends upon the moral proggress of mankind. "Justice is the end of government. It is the end of civil society," wrote the authors of the *Federalist*.[38] They then proceeded to show that injustice arises largely from the factious nature of man. That is to say, justice in the state is the resultant of justness in men. The foundations of a popular government are laid in the virtue and wisdom of the people by whose consent it was reared and is maintained. It may be true that the chief business of the statesman is to adjust the conflicting interests of individuals or groups in society. But this remains a problem in externals. The principles which are to control the destiny of a state must be sought in the wisdom and character of its citizens.

[38]No. 51

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